

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

R.C., by and through his guardian as
item, John D. Elliot,

Plaintiff,

v.

South Carolina Department of Social
Services (SCDSS) and Palmetto Place
Children's Shelter,

Defendants.

3:16-cv-03938-DCC

ORDER REQUIRING CHARLIE
HOWELL, III, TO ATTEND DEPOSITION

This Order directs Charlie Howell, III, to attend a deposition on August 28, 2018, at 9:00 a.m. at the Camden Law Firm, PA, 509 Walnut Street, Camden, South Carolina.

I. Procedural Background.

On June 28, 2018, at 12:15 p.m., Charlie Howell, III, was personally served with a subpoena to appear for a deposition on June 28, 2018, at 12:15 at the law offices of Davidson, Wren, & Plyler, 1611 Devonshire Drive, Second Floor, Columbia, South Carolina. ECF Nos. 90-1 (Affidavit of Service, June 28, 2018); 90-2 (Notice of Deposition of Charlie Howell, III, June 19, 2018). On July 11, 2018 at 1:00 p.m., Mr. Howell failed to appear. ECF. No. 90-3 at 4–5 (Certificate of Nonappearance of Charlie Howell, III). The parties waited fifteen minutes and began the deposition. *Id.* Mr. Howell did not contact any party to make alternative arrangements or reschedule his deposition. *Id.* None of the phone numbers for Mr. Howell were answered or working. Mr. Howell did not file a motion to quash the subpoena nor did he register any objections with the Court.

II. Analysis and Order.

Federal Rule of Civil Procedure 37(a) allows a party to apply to the Court for an order compelling discovery. Fed. R. Civ. P. 37(a)(2)(A). Rule 45 allows a subpoena to command a person to attend a deposition. Fed. R. Civ. P. 45(c)(1). Failure to obey a subpoena is subject to civil contempt if the subpoena has been served and the failure to obey is not adequately explained. Fed. R. Civ. P. 45(e).

The affidavit of service shows that Mr. Howell was properly served and that he failed to attend the deposition.

Failure of the non-party witnesses to appear at the aforementioned time and place for their respective deposition may result in the levying of sanctions and being held in civil contempt in accordance with Rule 45. See Fed. R. Civ. P. 45(g) ("The court for the district where compliance is required . . . may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.").

Charlie Howell, III, is directed to attend a deposition on August 28, 2018, at 9:00 a.m. at the Camden Law Firm, PA, 509 Walnut Street, Camden, South Carolina. While the Court makes no determination on whether Mr. Howell is in contempt of court due to his previous conduct as described above, the Court reserves the right hold Mr. Howell in contempt of court, *sua sponte* or upon motion of a party, if he fails to comply with this Order.

Upon Plaintiff's proper application, the United States Marshall is directed to personally serve a copy of this order upon Charlie Howell, III, and then file proof of such service immediately thereafter.

IT IS SO ORDERED.

August 7, 2018
Spartanburg, South Carolina

s/Donald C. Coggins, Jr.
United States District Judge